IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER MAFFUCCI, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 98-CV-2718

MEMORANDUM AND ORDER

J. M. KELLY, J. **JULY 15, 1999**

Presently before the Court is Defendants' Amended Offer of Judgment. Two of the three Plaintiffs rejected Defendants' offer, but one, Jean Conti Associates, contends it has accepted the offer, seizing upon the placement of an apostrophe. For the reasons that follow, and in consideration of the hearing the Court held yesterday, the Court finds the offer is ambiguous, and that no mutual manifestation of assent is possible in view of the ambiguity. The Court therefore rejects Jean Conti's position that it has accepted Defendants' offer.

The parties have been involved in various settlement negotiations that culminated with Defendants' offer to all Plaintiffs to settle the case for $215,000.00. As Defendants' counsel explained yesterday, he previously received authority from the City to settle the case for $250,000.00, and, after Plaintiffs declined to accept Defendants' offer, he made an offer of judgment to Plaintiffs for the limits of his authority. Defendants' counsel sent this Rule 68 Offer of Judgment to Plaintiffs twice, although the amended offer did not differ from the original in any material way. The first sentence of both versions substantially read, "[A]ll defendants in the above captioned matter hereby offer to allow judgment to be taken against them by plaintiffs Christopher Maffucci, Selena Fitanides and Jean Conti Associates, in the amount of Two

Hundred Fifty Thousand Dollars ($250,000)." The next sentence contains the troublesome apostrophe. "This amount represents the total liability of defendants for any and all of plaintiff's loss, claims, damages, interest, costs . . . ." Because the second sentence refers to the singular "plaintiff," Jean Conti proposes to accept the offer of judgment by itself.

Defendants argue the apostrophe is misplaced, and that this is obvious from the context of the entire offer. Although the word "plaintiff" does not appear elsewhere in the offer in the singular, Jean Conti's position is reasonable, if only barely. In view of this ambiguity, the Court must turn away from the offer's plain language and apply contract law principles to interpret the offer's meaning. Stewart v. Professional Computer Ctrs., Inc., 148 F.3d 937, 939 (8th Cir. 1998); Webb v. James, 147 F.3d 617, 620 (7th Cir. 1998); Nusom v. Comh Woodburn, Inc., 122 F.3d 830, 835 (9th Cir. 1997); Stubblefield v. Windsor Capital Group, 74 F.3d 990, 993 (10th Cir. 1996); Meridian Mortgage Corp. v. Spivak, Civ. A. No. 91-3932, 1992 WL 198442, at *2-*3 (E.D. Pa. Aug. 10, 1992). These principles require that the parties objectively manifest their mutual assent to the agreement's terms for the agreement to be binding. Williams v. Metzler, 132 F.3d 937, 947 (3d Cir. 1997); Degenhardt v. The Dillon Co., 669 A.2d 946, 950 (Pa. 1996). Those principles also tend to lead courts away from making a client pay for its attorney's mistake. See Whitaker v. Associated Credit Servs., Inc., 946 F.2d 1222, 1226 (6th Cir. 1991).

The requisite mutual assent is lacking here, and the Court finds Defendants are not bound by their offer of judgment. As is evidenced by their offers during settlement negotiations, Defendants never intended to offer any single Plaintiff the amount they were authorized to offer all Plaintiffs. The offer's predominate use of "plaintiffs" supports this view, as does Defendants' use of the conjunctive "and" when referring to Plaintiffs. This case, therefore, presents no more

than an unfortunate typographical error Plaintiffs likely recognized but attempted to use to their advantage. Cf. Whitaker, 946 F.2d at 1226 ("[T]here was no meeting of the minds because plaintiffs were aware that such an offer was 'outrageous.' Furthermore, defendants never intended to make such an offer. The mistake was more than wrongful assessment of the value of the case; it was a pure typographic error."). Defendants are not bound by their offer of judgment.

An Order follows.

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ORDER

AND NOW, this 15th day of July, 1999, upon consideration of Defendants' Offer of Judgment, and in further consideration of the argument the Court heard on July 14, 1999, it is hereby **ORDERED**:

1. Defendants are not bound by their Offer of Judgment or Amended Offer of Judgment; and

2. Defendants' Motion in Limine (Document No. 59) is **DISMISSED** without prejudice.

BY THE COURT:

_____
JAMES McGIRR KELLY, J.